

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES*

JUNE 8, 2004

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

Board Members Present:

Ron Alvarado, Vice President
Sean Harrigan, Member
Anne Sheehan, Member
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Laura Aguilera
Interim Executive Officer, State Personnel Board

The Board was advised of the following:

- A. Staff attended several budget committee hearings on both the Assembly and Senate sub-committees. Only one issue, funding of the LEAP staff, remains to be decided in the conference committee.
- B. The Governor has designated Friday, June 11, 2004, as a Day of Remembrance out of respect for Ronald Reagan, the fortieth President of the United States and former Governor of California.

* The Minutes for the Board can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

- C. The Department of Finance has indicated that the hiring freeze will expire on June 30, 2004.

3. REPORT OF THE CHIEF COUNSEL – Elise Rose

The Chief Counsel reported on the following:

- A. Paul v. State Personnel Board – The Plaintiff has filed a declaratory action in the California Supreme Court asking the court to decide whether the State Personnel Board loses jurisdiction to hear claims under the California Whistleblower Protection Act if a Notice of Findings is not issued within the statutory time period.
- B. State Personnel Board v. Department of Personnel Administration (Board of Adjustment litigation) – CSEA received permission from the Supreme Court to file an amicus brief.
- C. California Association of Supervisory Employees (CASE) v. State Personnel Board – CASE has filed a writ petition seeking disclosure of applicants' names on eligibility lists pursuant to the Public Records Act.
- D. Department of Personnel Administration has selected Bill Curtis as its Chief Counsel.
- E. SPB will be conducting mediation training beginning June 21, 2004.
- F. Elise Rose will be the guest speaker at the Sacramento County Bar Public Law Section meeting. The topic will be SPB's role and function and the recent Senate hearings held on SPB's role in discipline.

4. NEW BUSINESS

No new business

5. REPORT ON LEGISLATION – Sherry Hicks

The Board was advised of the following:

- A. AB 1827 (Cohn) - The Board approved a NEUTRAL position.
This bill would allow state public bodies, including the State Personnel Board (SPB) to hold closed sessions to discuss their response to a confidential final draft audit report by the Bureau of State Audits (BSA), but would require any discussion of an audit report that has been released to the public by the BSA to be conducted in open session, unless exempted by some other law.
- B. AB 2391 (Koretz) - The Board approved a NEUTRAL position.
This bill prohibits state agencies from contracting with private attorneys for legal services if the hourly rate charged for those services equal more than 250% the hourly rate billed to state agencies by state attorneys in State Bargaining Unit 2.
- C. AB 1825 (Reyes) - The Board Approved a DEFER to the Department of Fair Employment and Housing.
This bill would, among other things, add Section 12950.1 to the Government Code to require employers with 50 or more employees to provide two hours of sexual harassment prevention training to all supervisory employees within one year of January 1, 2005, unless the employer has provided such training and education to its supervisory employees after January 1, 2003.
- D. AB 2408 (Yee) - The Board approved a SUPPORT position.
AB 2408 amends the provisions contained in the Dymally-Alatorre Bilingual Services Act that require state agencies to employ a sufficient number of qualified bilingual staff to ensure an appropriate level of service is provided to Limited-English Proficient (LEP) people, in those local offices that serve a substantial number of LEP people.
- E. AB 2637 (Diaz) - OPPOSE UNLESS AMENDED
This bill would enact the Reporting by California State University (CSU) Employees of Improper Governmental Activities Act, and would establish procedures for the investigation and determination of whistleblower retaliation complaints filed by California State University (CSU) employees with the State Personnel Board, similar to those currently included in a provision of the California Whistleblower Protection Act (WPA) (Government Code section 8547 *et seq.*)

F. SB 1342 (Speier and Romero) – OPPOSE UNLESS AMENDED

This bill would fix the Inspector General's term at ten years, subject to Senate confirmation. It would also set the budget of the Office of the Inspector General (OIG) at an "appropriate percentage" of the annual budgets for the Department of Corrections and the Department of the Youth Authority. It would also establish basic protocols and requirements for conducting OIG investigations, and the bill would provide a mechanism for greater cooperation and less duplication of effort between the OIG and the SPB when those entities are conducting whistleblower retaliation investigations.

G. SB 1431 (Speier and Romero) – OPPOSE UNLESS AMENDED

This bill would require the Director of the Department of Corrections and the Director of the Youth Authority to: (1) provide for the development and implementation of a disciplinary matrix with offenses and associated punishments, that would apply to all employees of the respective department and would be consistent statewide; (2) adopt a code of conduct that clearly states an employee's responsibility to report employee misconduct and to cooperate in any law enforcement investigation; and (3) develop a program to ensure the protection of employees who have reported improper conduct and who need counseling and personal protection.

H. SB 1819 (Ashburn) - OPPOSE UNLESS AMENDED

This bill would allow the disclosure of records and information, under specified conditions, of a person with developmental disabilities to a state civil service employee against whom an adverse action has been filed, when necessary for the employee to defend against the adverse action.

6. ORAL ARGUMENT

Oral Argument in the matter of ANDREW CIRNER, CASE NO. 03-2241EA. Appeal from denial of request for reasonable accommodation. Department of Mental Health.

Persons Participating: Linda Nelson, Labor Relations Counsel, Department of Mental Health, representing department.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at prior hearing. [Government
Code Sections 11126(a), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

8. ORAL ARGUMENT
Written Argument only in the matter of SHANNON FROEMING, CASE NO.
03-2871EA. Appeal from reasonable accommodation. Department of
Mental Health.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

9. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER
APPEALS
Deliberations to consider matter submitted at prior hearing. [Government
Code Sections 11126(a), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

10. ORAL ARGUMENT
Oral Argument in the matter of JENNIFER KILL, CASE NO. 02-2164B.
Appeal for determination of back salary, benefits and interest. Department
of Corrections.
Persons Participating: Greg Nicholas, Supervising Sr. Staff Counsel,
California Department of Corrections, representing department.
Catherine Kennedy, Attorney, California State Employees Association.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

11. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER
APPEALS
Deliberations to consider matter submitted at prior hearing. [Government
Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

12. SELECTION ANALYST CERTIFICATE AWARDS
Awards presented to the following recipients: Alice Schneider, Barbara Hatfield, Barbara Warner, Bill Cooper, Carole Hinkle, Ellen Hickerson, Jeanette Johnston, Julia McLean, Maria Anderson, Roberta Nishimura and Stacey Burdue.
13. ORAL ARGUMENT
Oral Argument in the matter of RAY MARTINEZ, CASE NO. 03-3344. Appeal from dismissal. Department of Corrections.
Persons Participating: Steve McNeal, Staff Counsel, California Department of Corrections, representing department.
Richard J. Burton, Attorney, representing appellant.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

14. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS
Deliberations to consider matter submitted at prior hearing. [Government Code Sections 11126(a), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

15. ORAL ARGUMENT
Oral Argument in the matter of MARGARET A. MEJIA, CASE NO. 03-1848. Appeal from dismissal. Department of Corrections.
Persons Participating:
Linda M. Nelson, Labor Relations Counsel, Department of Mental Health, representing department.
Ben Allamamo, Attorney and Counselor, representing appellant.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

16. DELIBERATION ON ADVERSE ACTION, DISCRIMINATION COMPLAINT, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES.

The Board deliberated and voted on matters submitted at prior hearings; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by the administrative law judges of the State Personnel Board or by the Board itself. (See items 13 A, D, and E in the agenda and below.)[Government Code Sections 11126(a), and 18653.]

17. PENDING LITIGATION

As discussion of pending litigation in open session would be prejudicial, the Board conducted closed session conferences with legal counsel and received advice as necessary regarding pending litigation as listed in the agenda. [Government Code Sections 11126(e)(1) and 18653.]

18. RECOMMENDATIONS TO THE LEGISLATURE

The Board deliberated on recommendations to the Legislature. [Government Code Section 18653.]

19. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor. [Government Code Section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

20. DISCUSSION OF UPCOMING BOARD MEETING SCHEDULE
OF JUNE 22, 2004, IN SACRAMENTO, CALIFORNIA

BOARD ACTIONS

21. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES
OF MAY 18, 2004

ACTION: Adopted on June 8, 2004

VOTE: Alvarado, Harrigan, Sheehan, Tom - Aye

22. ACTION ON SUBMITTED ITEMS
(See Minutes Page 30)

23.

EVIDENTIARY CASES

The Board Administrative Law Judges conducts Evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These cases have been taken under submission by the State Personnel Board at a prior meeting. On June 8, 2004, the Board adopted by vote (Alvarado, Harrigan, Sheehan, Tom) as indicated below, the following decisions presented by Elise Rose, Chief Counsel, State Personnel Board.

DORYANNA ANDERSON-JOHNSON, CASE NO. 00-1687A

Appeal from denial of reasonable accommodation
Correctional Lieutenant
California Rehabilitation Center - Norco
Department of Corrections
NO ACTION

RICHARD COELHO, CASE NO. 02-1796R
Appeal from constructive medical termination
Fish and Game Warden
Department of Fish and Game
NO ACTION

ROSIE L. DASHIELL, CASE NO. 03-2279
Appeal from dismissal
Public Safety Dispatcher I
California Highway Patrol

ACTION: The Board adopted the Administrative Law Judge's proposed decision modifying the dismissal to a six-months suspension.

RANDALL DODSON, Case No. 03-1587
Appeal from non-punitive termination
Caltrans Equipment Operator I
Department of Transportation
ACTION: Non-punitive termination revoked.

CYNTHIA GEORGE, CASE NO. 03-2494

Appeal from suspension

Administrative Law Judge I

Unemployment Insurance Appeals Board

ACTION: Two-week suspension modified to a one week suspension.

PAUL H. KEMP, Case No. 01-2841

Appeal from dismissal

Teacher Assistant - Youth Correctional

Reception Center and Clinic - Sacramento

Department of the Youth Authority

NO ACTION

CHRISTOPHER MIRAMONTES, CASE NO. 03-2299

Appeal from five-percent reduction in salary for six months

Special Agent

Department of Corrections

NO ACTION

ALICE VAN-THU, CASE NO. 03-0413

Appeal from automatic resignation

Administrative Support Coordinator I

California State University –

Monterey Bay

NO ACTION

PHUONG VU, CASE NO. 03-1145

Appeal from dismissal

Transportation Engineer (Civil)

Department of Transportation

ACTION: Dismissal modified ten-working days suspension.

BEVERLY WILSON, CASE NO. 03-1150A

Appeal from dismissal

Administrative Support Assistant II

California State University - Carson

NO ACTION

B. CASES PENDING

- Oral Arguments

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

ANDREW CIRNER, CASE NO. 03-2241EA

Appeal from denial of request for
reasonable accommodation
Senior Psychiatric Technician
Department of Mental Health
NO ACTION

SHANNON FROEMING, CASE NO. 03-2871EA

Appeal from denial of request for reasonable accommodation
Employment Program Representative
Employment Development Department
NO ACTION

JENNIFER KILL, CASE NO. 02-2164B

Appeal for determination of back salary,
benefits and interest
Supervising Cook
California Correctional Institution - Tehachapi
Department of Corrections
NO ACTION

RAY MARTINEZ, CASE NO. 03-3344

Appeal from dismissal
Correctional Officer
Substance Abuse Treatment Facility – Corcoran
Department of Corrections
NO ACTION

MARGARET A. MEJIA, CASE NO. 03-1848

Appeal from dismissal
Psychiatric Technician (Safety)
Department of Mental Health
NO ACTION

C. CHIEF COUNSEL RESOLUTIONS

LORI BERWICK, CASE NO. 03-1130, 03-1131, 03-2275
Appeal from five-percent reduction in salary for twelve pay periods,
Appeal from 30-calendar days suspension and Appeal from
dismissal
Office Services Manager II
State Board of Equalization
ACTION – The Board adopted a resolution granting appellant's
request for an order to show cause and directing the Board of
Equalization to pay appellant all back pay and benefits owed to
her.

MARK BRAVO, CASE NO. 27862
Appeal from dismissal
Supervising Registered Nurse
The Board adopted a resolution finding that appellant is not
entitled to an award of benefits for the period that he was
incarcerated.

ROBERT JENKINS, CASE NO. 03-0598P
Appeal of Whistleblower Retaliation
Staff Information Systems Analyst
Department of Health Services
ACTION: The Board issued decision adopting the Notice of the
Executive Officer's Findings as the Board's decision.

WAYNE McKAY, CASE NO. 03-1496P
Appeal from whistleblower retaliation
Associate Programmer Analyst (Specialist)
State Water Resources Control Board
for rehearing filed by appellant.
ACTION: The Board issued decision adopting the Notice of the
Executive Officer's Findings as the Board's decision.

MICHAEL K. MOSELEY, M.D., CASE NO. 03-2996P
Appeal for whistleblower retaliation by the
Health and Human Services Agency, Department of Social
Services and Robert Schoenfelder, Director of the Department of
Social Services
ACTION: The Board issued decision adopting the Notice of the
Executive Officer's Findings as the Board's decision.

GEORGE MRVICHIN, CASE NO. 02-4089P

Appeal of Whistleblower Retaliation

Athletic Trainer/Instructor

Los Angeles Community College District

ACTION: The Board issued decision adopting the Notice of the Executive Officer's Findings as the Board's decision.

- Court Remands

These cases have been remanded to the Board by the court for further Board action.

ROBERT HALL, CASE NO. 02-2027R

Appeal from dismissal

Correctional Officer

California State Prison – Solano

Department of Corrections

ACTION: Submitted.

- Stipulations

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

DENNIS VALENTINO, CASE NO. 03-3223

Appeal from suspension

Pest Control Specialist

California State University – Long Beach

ACTION: The board has adopted the decision approving Stipulation for Settlement.

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

- Proposed Decisions

These are ALJ proposed decisions submitted to the Board for the first time.

GWENETTE BACKOVICH, CASE NO. 02-4145

Appeal from dismissal

Officer

California Highway Patrol

ACTION: Dismissal sustained.

June 8, 2004

RICHARD BALLER, CASE NO. 03-3160
Appeal from fifteen-working-days suspension
Officer
California Highway Patrol
ACTION: Suspension sustained.

JANETTE CLEMENT, CASE NO. 03-3443
Appeal from three-month suspension
Psychiatric Technician
Department of Developmental Services
ACTION: Three month suspension sustained.

Consolidated with:
RUDY BURTON, CASE NO. 03-3444
Appeal from a one-step reduction in salary for 12-months
Psychiatric Technician Assistant
Department of Developmental Services at
ACTION: One-step reduction in salary for 12-months revoked.

Consolidated with:
RICHARD GRAY, CASE NO. 03-3445
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services
ACTION: Dismissal modified to a one-year suspension.

Consolidated with:
MARK REITZEL, CASE NO. 03-3620
Appeal from a two-month suspension
Psychiatric Technician
Department of Developmental Services
ACTION: Two-month suspension modified to a one-step reduction
in salary for six months.

Consolidated with:
MARIA VELASQUEZ, CASE NO. 03-3618
Appeal from dismissal
Psychiatric Technician Assistant
Department of Developmental Services
ACTION: Dismissal modified to a one-step reduction in salary for
six months.

Consolidated with:
LIZA WEST, CASE NO. 03-3661
Appeal from a two-step reduction in
salary for 12-months
Psychiatric Technician Assistant
Department of Developmental Services
ACTION: Two-step reduction in salary for twelve months modified
to a one-step reduction in salary for twelve months.

LATISHIA COLE-JAMES, CASE NO. 04-0494

Appeal from a five-percent reduction
in salary for three months

Personnel Specialist

Department of Consumer Affairs

ACTION: Five-percent reduction in salary for three months
sustained.

CAROLYN GRAHAM, CASE NO. 03-1852

Appeal from five-working-days
suspension

Parole Administrator II (Adult)

Department of Corrections

ACTION: Five-working-days suspension sustained.

DEBRA GREENE, CASE NO. 03-0621

Appeal from dismissal

Motor Vehicle Field Representative

Department of Motor Vehicles

ACTION: Administrative Law Judge's proposed decision rejected by
board. Board to decide case itself.

STANLEY HEDDLESON, CASE NO. 03-3432

Appeal from non-punitive termination

Psychiatric Social Worker, Correctional Facility

Department of Corrections

ACTION: Non-punitive termination sustained.

CLAUDYA HERNS, CASE NO. 03-3199

Appeal from five-percent reduction
in salary for twelve months

Correctional Officer

California State Prison - Lancaster

Department of Corrections

ACTION: Salary reduction sustained.

JEAN LUCKMAN, CASE NO. 03-3533E

Appeal from discrimination and retaliation

Psychiatric Social Worker, Correctional Facility

Valley State Prison - Chowchilla

Department of Corrections

ACTION: Board adopted to grant discrimination claim in
part.

YVETTE MACK, CASE NO. 03-2318

Appeal from dismissal

Administrative Support Coordinator I

California State University - Carson

ACTION: Dismissal modified to a three month suspension.

ANTHONY MARISIC, CASE NO. 02-3544

Appeal from five-percent reduction in salary for six pay periods

Teacher (High School-Physical Education)

Department of the Youth Authority - Chino

ACTION: Salary reduction revoked.

CLINTON MONROE, CASE NO. 03-2311

Appeal from dismissal

Correctional Officer

Duel Vocational Institution - Tracy

Department of Corrections

ACTION: Dismissal sustained.

CLAUDIA RODRIGUEZ, CASE NO. 04-0283

Appeal for reinstatement

Administrative Support Assistant II

California State University - Dominguez Hills

ACTION: Petition to set aside automatic resignation denied.

MICHAEL RODRIGUEZ, CASE NO. 03-3751

Appeal from five-percent reduction

in salary for six months

Correctional Officer

Centinela State Prison - Imperial

Department of Corrections

ACTION: Five-percent reduction in salary for six months sustained.

KEVIN E. ROYA, CASE NO. 03-3574

Appeal from dismissal

Mechanic's Helper

Department of Transportation

ACTION: Dismissal modified to a one-month suspension.

ABRAHAM SANCHEZ, CASE NO. 03-3179

Appeal from thirty-work-days suspension

Job Agent

Employment Development Department

ACTION: Thirty-work –days suspension modified to twenty-work-days suspension.

ROGER WILSON, CASE NO. 03-2990

Appeal from official reprimand

Correctional Counselor I

California State Prison – San Quentin

Department of Corrections

ACTION: Official reprimand revoked.

- Proposed Decisions Taken Under Submission At Prior Meeting
These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

- Proposed Decisions After Board Remand

NONE

- Proposed Decisions After SPB Arbitration

NONE

E. PETITIONS FOR REHEARING

- ALJ Proposed Decisions Adopted By The Board
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

HELENE BAGLEY, CASE NO. 03-1336P

Appeal from formal reprimand

Correctional Sergeant

California Institution for Men – Chino

Petition for rehearing filed by appellant denied.

ANTHONY DUARTE, CASE NO. 03-2955P
Appeal from dismissal
Caltrans Equipment Operator II
Department of Transportation
Petition for rehearing filed by appellant denied.

JAMES MENA, CASE NO. 03-1174P
Appeal from Whistleblower Retaliation
High School Teacher – PE, CF
Department of the Youth Authority
Petition for rehearing filed by appellant denied.

HOWARD SANDERS, CASE NOS. 03-0691P
and 03-2319P
Appeal from five-working-days suspension and thirty-working-
days-suspension
Operating Systems Analyst
California State University – San Jose
Petition for rehearing filed by appellant denied.

CLAUDETTE SMITH, CASE NO. 03-3578P
Appeal from constructive medical termination
Office Assistant (Typing)
California Institution for Men – Chino
Petition for rehearing filed by appellant denied.

KIMBERLY TAYLOR, CASE NOS. 02-1293P and 02-3645P
Appeal from sixty-days suspension and dismissal
Correctional Officer
California State Prison – San Quentin
Petition for rehearing filed by appellant denied.

- Whistleblower Notice of Findings
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

None

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

DONALD ATKINS, CASE NO. 03-1448P
Appeal from five-percent reduction
in salary for six months
Correctional Officer
California State Prison, San Quentin
Department of Corrections at San Quentin
NO ACTION

TIMOTHY BOBITT, CASE NO. 02-2856
Appeal from suspension
Senior Special Agent in Charge
Department of Justice at Sacramento
NO ACTION

NICHOLAS COMAITES, CASE NO. 03-0062
Appeal from official reprimand
Correctional Counselor II
Department of Corrections
AND
PAUL WARD, CASE NO. 03-0332
Appeal from official reprimand
Correctional Administrator
Department of Corrections
NO ACTION

MICHELLE DAWKINS, CASE NO. 03-2755
Appeal from demotion
Fiscal Services Supervisor to Typist Clerk III
Human Services Agency, Merced County
NO ACTION

RONALD GALI, CASE NO. 03-0462
Appeal from dismissal
Native American Spiritual Leader
Folsom State Prison - Represa
Department of Corrections
NO ACTION

MARTIN HERNANDEZ, CASE NO. 02-4449P
Appeal from demotion
Correctional Sergeant
Calipatria State Prison – Imperial
Department of Corrections
NO ACTION

ELIZABETH HERRERA, CASE NO. 03-2220A
Appeal from constructive medical termination
Administrative Support Coordinator I
California State University – San Jose
NO ACTION

MARY HUTTNER, CASE NO. 02-1690
Appeal from demotion
Staff Services Manager I to the
position of Associate Health Program
Advisor (top step)
Department of Health Services
NO ACTION

CONNIE JAMES, CASE NO. 03-3136
Appeal from 15-working-days suspension
Accounting Technician
Employment Development Department
NO ACTION

CONNIE JOHNSON, CASE NO. 03-2620
Appeal from 30 calendar days suspension
Employment Program Representative
Employment Development Department
NO ACTION

HUGO LANDEROS, CAE NO. 03-3190
Appeal from dismissal
Employment Program Representative
Employment Development Department
NO ACTION

JACQUELYN McCARVER, CASE NO. 03-0669
Appeal from demotion
Correctional Sergeant
Rainbow Conservation Center - Fallbrook
Department of Corrections
NO ACTION

LEIJANE OGAWA, CASE NO. 03-2943E
Appeal from discrimination
Office Assistant (General)
Department of Transportation
NO ACTION

MARYLAND PAGE, CASE NO. 03-3703
Appeal from five-percent reduction in
salary for twelve-months
Correctional Officer
Ironwood State Prison - Blythe
Department of Corrections
NO ACTION

VIRGINIA PARKER, CASE NO. 03-0325
Appeal from demotion
Correctional Lieutenant
Ironwood State Prison – Blythe
Department of Corrections
NO ACTION

KEVIN REDDINGTON, CASE NOS. 03-2646 & 03-0386P
Appeal from ten-percent reduction in salary
For six pay periods, and dismissal
Office Technician (Typing)
Department of Forestry and Fire Protection
NO ACTION

KIM RITTENHOUSE, CASE NOS. 03-3541 and 03-3542E
Appeal from denial of reasonable accommodation and from
constructive medical termination
Office Technician (General)
Department of Fish and Game
NO ACTION

PEARLIE BLEDSOE-TOWNES, CASE NO. 03-2966E
Appeal from denial of request for reasonable Accommodation
Correctional Sergeant
Central California Women's Facility – Chowchilla
Department of Corrections
NO ACTION

DENNIS UYEDA, CASE NO. 03-2396P
Appeal from five-working-days suspension
Latent Print Analyst II
Department of Justice
NO ACTION

NANCY VALENTINO, Case No. 03-0699
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services
NO ACTION

BOBBY WANG, CASE NO. 02-2684
Appeal from dismissal
Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: Appellant withdrew appeal.

GARY WHALEY, CASE NO. 03-1420E
Appeal from discrimination
Employment Program Representative
Employment Development Department
NO ACTION

24. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE
SECTION 18671.1 EXTENSION
(See Minutes Pages 32-33)

25. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

On June 8, 2004, the Board adopted the following decisions
presented by Laura Aguilera, Interim Executive Officer,
California State Personnel Board.

VOTE: Alvarado, Harrigan, Sheehan, Tom - Aye

RUHULLAH AHAMADI, CASE NO. 03-2570
Correctional Officer
Department of Corrections
ACTION: DENIED

JOANNA BODMAN, CASE NO. 03-1511
Correctional Officer
Department of Corrections
ACTION: DENIED

RICHARD CAUDILLO, CASE NO. 03-1508
Correctional Officer
Department of Corrections
ACTION: DENIED

JASONN DARR, CASE NO. 03-1913
Correctional Officer
Department of Corrections
ACTION: GRANTED

JEFFREY DORTON, CASE NO. 03-1032
Correctional Officer
Department of Corrections
ACTION: DENIED

MICHAEL DOUCETTE, CASE NO. 03-1098
Correctional Officer
Department of Corrections
ACTION: DENIED

STEPHEN HARROWER, CASE NO. 03-0465
Correctional Officer
Department of Corrections
ACTION: DENIED

MANDEEP HUSSON, CASE NO. 03-0345
Correctional Officer
Department of Corrections
ACTION: DENIED

JOSEPH JUAREZ, CASE NO. 03-1723
Correctional Officer
Department of Corrections
ACTION: DENIED

JOHN KULIC, CASE NO. 03-1564
Correctional Officer
Department of Corrections
ACTION: DENIED

BENNETT LEWIS, CASE NO. 03-1719
Correctional Officer
Department of Corrections
ACTION: DENIED

DAVID LIN, CASE NO. 02-3509
Cadet, CHP
California Highway Patrol
ACTION: GRANTED

LANGDON MILLS, CASE NO. 03-2028
Youth Correctional Counselor
Department of Youth Authority
ACTION: DENIED

SHERRY MOLINA, CASE NO. 03-1829
Correctional Officer
Department of Corrections
ACTION: DENIED

JAVIER ORTIZ, CASE NO. 03-1083
Correctional Officer
Department of Corrections
ACTION: DENIED

MARCOS PACHECO, CASE NO. 03-1740
Correctional Officer
Department of Corrections
ACTION: DENIED

CARL STRAND, CASE NO. 02-3509
Correctional Officer
Department of Corrections
ACTION: DENIED

TENNESSEE STROUP, CASE NO. 03-081
Correctional Officer
Department of Corrections
ACTION: DENIED

ROBBIE VASQUEZ, CASE NO. 03-2511
Correctional Officer
Department of Corrections
ACTION: DENIED

GUADALUPE VELEZ, CASE NO. 03-2513
Correctional Officer
Department of Corrections
ACTION: GRANTED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

On June 8, 2004, the Board adopted the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Alvarado, Harrigan, Sheehan, Tom - Aye

SHAWN FORD, CASE NO. 03-1973
Correctional Officer
Department of Corrections
ACTION: DENIED

DAVID PAIGE, CASE NO. 03-2768
Correctional Officer
Department of Corrections
ACTION: DENIED

TRAVIS WHITE, CASE NO. 03-2872
Medical Technical Assistant I
Department of Corrections
ACTION: DENIED

C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS

On June 8, 2004, the Board adopted the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Alvarado, Harrigan, Sheehan, Tom - Aye

(Examination Case)
JOHN WONG, CASE NO. 02-4103
Staff Services Manager I (SSMI)
Department of Education
ACTION: GRANTED

(Minimum Qualifications Case)
RAED KHAMMASH, CASE NO. 01-3705
Transportation Engineer (Civil)
Department of transportation
ACTION: DENIED

(Merit Issue Complaint Cases)

CHRISTINE LIEBER, CASE NOS. 03-1457, 03-1458,
& 03-1459

Workers' Compensation Payroll Auditor,
Workers' Compensation Claims Adjuster and Workers'
Compensation Insurance Representative
State Compensation Insurance Fund
ACTION: DENIED

D. RULE 212 OUT-OF-CLASS APPEALS - NONE
VOIDED APPOINTMENT APPEALS - NONE
RULE 211 APPEALS - NONE

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

E. REQUEST TO FILE CHARGES CASES
PETITIONS FOR REHEARING CASES - NONE

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

ACTION: DENIED

(RTFC Cases)

MICHAEL BRANCATO, CASE NO. 03-0512

Parole Agent I
Department of Corrections
ACTION: DENIED

ROBERT GREER, CASE NO. 02-2296

A former employee of the Department of
Corrections
ACTION: DENIED

WANDA HOGGARD, CASE NO. 02-3966

Office Technician
Department of Youth Authority
ACTION: DENIED

June 8, 2004

F. PSYCHOLOGICAL SCREENING CASES

On June 8, 2004, the Board adopted the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Alvarado, Harrigan, Sheehan, Tom - Aye

LESLIE CENTENO, CASE NO. 03-2042

Correctional Officer

Department of Corrections

ACTION: GRANTED

JORGE SANCHEZ, CASE NO. 04-0923

Correctional Officer

Department of Corrections

ACTION: GRANTED

26. NON-HEARING CALENDAR

The following proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It is anticipated that the Board will act on these proposals without a hearing.

On June 8, 2004, the Board adopted the following decisions presented by Laura Aguilera, Interim Executive Officer, California State Personnel Board.

VOTE: Alvarado, Harrigan, Sheehan, Tom - Aye

A. CHIEF HEARING REPORTER

The Department of Industrial Relations (DIR) is proposing to establish a new department specific supervisory class entitled Chief Hearing Reporter, Division of Workers' Compensation.

ACTION: Adopted

B. EQUIPMENT ENGINEER

The Department of Transportation (CalTRANS) and DPA propose to establish the deep class of Equipment Engineer with Alternate Ranges A through D, similar to other engineering deep classes in State Services with registration as a mechanical, electrical, civil, agricultural, manufacturing or structural engineering requirement at Range D, and with a 12 month probationary period. In

addition, CalTRANS proposes to footnote 24 the existing class of Associate Equipment Engineer.

ACTION: Retracted from calendar by staff, not for Board consideration.

27. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

REGISTERED NURSE I, PHYSICIAN AND SURGEON

The California Department of Corrections (CDC) requests that the State Personnel Board abolish the Registered Nurse I, Correctional Facility and Physician and Surgeon, Correctional Facility eligible lists prior to the minimum 12 months required for the life of these lists, effective June 30, 2004. The eligibility lists resulting from the E&E examination process administered by CDC for the above mentioned classification have resulted in more than 20 candidates on the lists and more than three ranks, contrary to SPB policy for E&E examinations. CDC has developed new examinations for the above-mentioned classification. All of the candidates currently on the eligibility lists have been notified and will have opportunity to compete in the new examination process.

ACTION: Retracted from calendar by staff, not for Board consideration.

28. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) CHIEF COUNSEL

The Department of Food and Agriculture proposes to allocate the above position to the CEA category. The Chief Counsel serves as the special legal advisor to the California Department of Food and Agriculture (CDFA), its boards and commissions, and the District Agricultural Associations providing legal and policy consultation.

- (2) ASSISTANT SECRETARY, PROGRAM AND FISCAL AFFAIRS
The California Health and Human Services Agency proposes to allocate the above position to the CEA category. The Assistant Secretary, Program and Fiscal Affairs, Health and Human Services Agency is the principal advisor to the Secretary, the Deputy Secretary, and other senior Agency staff on program policy and fiscal policy matters for their assigned departments and programs.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

- (1) ASSISTANT DIRECTOR, HOMEOWNERSHIP PROGRAMS
The California Housing Finance Agency has withdrawn their request to allocate the above position to the CEA category effective May 14, 2004.
- (2) DEPUTY DIRECTOR, ASSET MANAGEMENT PROGRAMS
The California Housing Finance Agency has withdrawn their request to allocate the above position to the CEA category effective May 14, 2004.
- (3) ASSISTANT DIRECTOR, LEGISLATIVE & PUBLIC AFFAIRS BRANCH
The Office of Statewide Health Planning and Development's request to allocate the above position to the CEA category has been approved effective May 6, 2004.

ACTION: Noted

- 29. WRITTEN STAFF REPORT FOR BOARD INFORMATION
 - A. GOVERNMENT CODE SECTION 19683 (F)
REQUIRES THE STATE PERSONNEL BOARD TO

PROVIDE THE GOVERNOR AND THE LEGISLATURE WITH AN ANNUAL REPORT REGARDING COMPLAINTS FILED AND LEGAL ACTIONS TAKEN PURSUANT TO SPB'S ROLE IN THE CALIFORNIA WHISTLEBLOWER PROTECTION ACT. THIS REPORT COVERS THE 2003 CALENDAR YEAR. SPB STAFF IS REQUESTING THE BOARD TO APPROVE THIS REPORT FOR SUBMISSION TO THE GOVERNOR AND THE LEGISLATURE.

30. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
NO ACTION
2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002).
NO ACTION
3. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding “Safety” as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added.
(Presented to Board March 4, 2003).
NO ACTION
4. PSC NO’S 04-01 and 04-02
Appeal of the California State Employees Association (CSEA) from the Executive Officer’s November 20, 2003 denial of Jurisdiction over CSEA’s Request to Review Contracts between the Department of Health Services (DHS) and Hubert Systems Consulting, Inc. and IBM Corporation.
ACTION: On June 8, 2004, the Board adopted a decision sustaining the Executive Officer’s determination that the State Personnel has no jurisdiction to review contracts that have already expired before review is requested.

VOTE: Alvarado, Harrigan, Sheehan, Tom – Aye
5. OFFICE OF THE INSPECTOR GENERAL (OIG)
Resolution to abolish eligible lists created by the Office of the Inspector General and to void two appointments.

ACTION: On June 8, 2004, the Board adopted a resolution permitting the promotional lists established by OIG to remain valid and allowing OIG to administer a deferred examination for those employees who did not compete in the exams.
(See resolution on Minutes pages 35-37)

VOTE: Alvarado, Harrigan, Sheehan, Tom – Aye

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on June 8, 2004.

VOTE: Alvarado, Harrigan, Sheehan, Tom – Aye.

LAURA AGUILERA
Interim Executive Officer
California State Personnel Board

WHEREAS, Article VII, section 1, subdivision (b) of the California Constitution provides, "In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination"; and

WHEREAS, Government Code § 18900, subdivision (a) provides, "Eligible lists shall be established as a result of free competitive examinations open to persons who lawfully may be appointed to any position within the class for which these examinations are held and who meet the minimum qualifications requisite to the performance of the duties of that position as prescribed by the specifications for the class or by board rule"; and

WHEREAS, Government Code § 19257.5 states, "When the appointment of an employee has been made and accepted in good faith, but where such appointment would not have been made but for some mistake of law or fact which if known to the parties would have rendered the appointment unlawful when made, the board may declare the appointment void from the beginning if such action is taken within one year after the appointment"; and

WHEREAS, in July 2003, the Office of the Inspector General (OIG) was notified that its budget was scheduled to be reduced by approximately 70% and that a large number of OIG employees, the majority of whom were in Deputy Inspector General (DIG) classifications, would be subject to layoff if they did not first obtain employment with other State agencies; and

WHEREAS, when the departmental layoffs were announced, many of OIG's employees in the DIG classifications had transfer, and not list, appointments; and

WHEREAS, in light of the anticipated departmental layoffs, OIG decided to administer promotional examinations so that OIG employees with transfer appointments could obtain list appointments, in order to enhance their opportunities to transfer further into different classifications in other state agencies; and

WHEREAS, in or about August 2003, OIG administered promotional examinations for the classifications of Deputy Inspector General; Deputy Inspector General, Senior; and Deputy Inspector General, In-Charge and established the following eligible lists:

- Deputy Inspector General effective September 11, 2003
- Deputy Inspector General, Senior effective September 11, 2003
- Deputy Inspector General, In-Charge effective August 21, 2003; and

WHEREAS, after OIG announced the promotional examinations, an e-mail was circulated that indicated that there was "no anticipated benefit" for OIG employees who already had list appointments to compete because OIG was in "no position to offer promotions"; and

WHEREAS, the Board finds that the information that OIG provided to employees with list appointments may have dissuaded some of those employees from participating in the promotional examinations; and

WHEREAS, the Board finds that OIG employees who participated in the above examinations did so in good faith; and

WHEREAS, although the Board is concerned that OIG may have administered the promotional examinations in an effort to circumvent the impact of Board Rule § 435¹ upon OIG employees with transfer appointments, in light of the unique and exceptional circumstances in this case, the Board has decided not to abolish the eligible lists, but, instead, to permit OIG to make list and promotional appointments from those lists in accordance with this resolution;

WHEREAS, in order to ensure that any OIG employees with list appointments who may have been dissuaded from taking the promotional examinations obtain an equal opportunity to compete in those examinations, the Board finds that OIG should be directed to offer all OIG employees, who met the minimum qualifications as of the date of the promotional examinations but did not compete in those promotional examinations, an opportunity to take deferred examinations; and

WHEREAS, in the interests of equity, the Board has decided not to void any list appointments that were made from the eligible lists; and

WHEREAS, in the interests of equity, the Board has decided not to void the transfer appointments of the OIG employees who have appealed to the Board from the voiding of those appointments;

THEREFORE, BE IT RESOLVED AND ORDERED, that:

1. The following promotional lists established by OIG are hereby allowed to remain in effect:
 - Deputy Inspector General effective September 11, 2003

¹ Title 2, California Code of Regulations § 435 provides:

Consecutive transfers shall not be permitted when their combined result would be inconsistent with the provisions of this article or Government Code Section 19050.4.

The effect of this rule is to prohibit an employee from obtaining multiple transfer appointments where the total result of those transfer appointments would be to grant the employee an appointment to a classification whose maximum salary range is two or more steps higher than the maximum salary range of the employee's last list appointment. In other words, the rule prohibits consecutive transfers when the net result is to allow an employee to transfer into a promotional position without having taken a promotional examination.

June 8, 2004

- Deputy Inspector General, Senior effective September 11, 2003
- Deputy Inspector General, In-Charge effective August 21, 2003

Permanent list appointments that OIG made from these lists shall stand. OIG may grant list appointments to employees who, at the time of examination, had permanent status as a result of transfer appointments in the classifications for which they examined. The effective date of any such list appointments made from these lists may be made retroactive to the date the lists were established.

2. The Board hereby rescinds the voiding of the transfer appointments of Elizabeth Hawkins and Renee Encoyand to Correctional Counselor II Supervisors with the Board of Prison Terms. These individuals shall be granted retroactive list appointments as Deputy Inspector Generals as of the date the list for that classification was established, and their transfer appointments as Correctional Counselor II Supervisors with the Board of Prison Terms shall be reinstated, with lost back salary and benefits.
3. OIG shall administer deferred promotional examinations for:
 - Deputy Inspector General
 - Deputy Inspector General, Senior
 - Deputy Inspector General, In-Charge

Only current and former OIG employees who met the minimum qualifications to compete in the promotional examinations listed above on the date those examinations were given, but did not take those examinations, shall be permitted to compete in the deferred examinations. OIG shall notify all such current and former employees of their opportunity to participate in the deferred examinations. The eligible lists resulting from the deferred examinations shall be merged with the eligible lists that were established from the original examinations given in 2003. OIG shall not make any promotional appointments from the eligible lists until after the deferred examination and original examination lists have been merged. Promotional appointments made from the merged lists shall be effective as of the date they are made and shall not be retroactive. The merged eligible lists shall expire six months after establishment unless extended by OIG.

4. SPB's Merit Employment and Technical Resources Division shall monitor all examinations given by OIG for two years beginning June 8, 2004, through June 7, 2006, to ensure that OIG's examinations and candidate selections are administered in accordance with the merit principle. During this time period, OIG shall provide SPB with at least 30 days' prior notice of all civil service examinations that it intends to administer and SPB staff shall provide OIG with technical assistance, guidance, and/or oversight as needed.

The foregoing resolution was made and adopted by the State Personnel Board at its meeting of June 8, 2004, as reflected in the record of the meeting and Board minutes.